SUPREME COURT, U. S.

FILED

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966.

No. 1007

HARRY P. LOCKLIN AND ELMER J. BRANT, GENERAL PARTNERS DOING BUSINESS UNDER THE FIRM NAME OF RADIANT COLOR COMPANY,

Petitioners,

vs.

SWITZER BROTHERS, INC., A CORPORATION,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION.

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BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION.

COUNTER STATEMENT OF QUESTIONS PRESENTED FOR REVIEW.

1. Where the Appellate Court has repeatedly decided in this patent infringement suit that the claims fully comply with the requirements of Title 35 U. S. C., Section 112 and are not functional "at the exact point of novelty", within the meaning given that expression by this Court, and where this Court has previously denied certiorari on essentially the same questions now presented as Questions 1 and 2, should certiorari now be granted?

2. Where the Appellate Court in a contempt proceeding remanded for the determination of a sole question of

fact and thereafter affirmed the District Court's finding of that fact, and declined to reexamine its original finding that the claims were sufficiently precise, should this Court agree to review the concurrent findings of the lower courts as to specific facts peculiar to this patent infringement suit and here embodied or involved in Questions 3 and 4?

ARGUMENT.

Petitioners have presented four questions for review. Respondent counters with the foregoing two questions that more accurately reflect the background necessary to put in true perspective what is really being asked of this Court.

While petitioners purport to apprise this Court of the "Opinions Below" (page 2 and the reprints of opinions in the Appendix), petitioners conveniently overlook or gloss over decisions below that have a direct bearing upon their questions.

One such decision was rendered by the Court of Appeals in connection with petitioners' Second Petition for Rehearing*, filed on March 11, 1966, specifically asking the Ninth Circuit Court of Appeals, in view of its findings on contempt, to reverse its holding that the claims in suit fully complied with Title 35, Section 112. The Court summarily denied said Second Petition on November 30, 1966 (Not reported).

In said Second Petition, petitioners presented substantially the same contentions and questions as petitioners do in their present Petition. Petitioners rely upon no new fact nor any new controlling decision not placed before the Ninth Circuit Court of Appeals by said Second Petition and/or by the appeal decided by that Court on October 24, 1966 (368 F. 2d 553; Appendix, page 71a).

As the Court of Appeals stated, in denying the last mentioned appeal (Appendix, page 73a):

> "Appellants invite us, on the basis of subsequent developments, to reexamine our original determination

* This Second Petition for Rehearing will be found in Respondent's Appendix hereto, pages 10 to 20.

that the claims of the Kazenas patent were sufficiently precise. We decline to do so."

Petitioners have made not one but many attempts (for chronological list see Respondent's Appendix, p. 9) to have the Ninth Circuit Court of Appeals redetermine the basic question of validity that petitioners now present to this Court for review. In the face of the repeated affirmations by the Court of Appeals of its original determination of validity, petitioners' "Reasons for Granting the Writ" (pages 10 to 18) lack conviction and are without merit.

The Petition additionally seeks to overturn a fact finding, viz., that petitioners' 4-C resin (Appendix 57a, 72a) was "substantially insoluble in aromatic hydrocarbon solvents", as that phrase in the claims had been previously delineated. On the basis of this fact finding of the District Court, and affirmed by the Appeals Court, petitioners were found to be in contempt. Such finding was solely a fact issue, the Appellate Court having already found the claims in suit to comply with Sec. 112 and to be valid. The power of this Court should not be invoked to review a purely fact finding of the lower courts. "We do not grant a certiorari to review evidence and discuss specific facts" *United States* v. *Johnston*, 268 U. S. 220, 227, 45 S. Ct. 496, 69 L. Ed. 925.

The previous Petition for Writ of Certiorari (filed October Term 1961, No. 803, and the Petition for Rehearing, 369 U. S. 861, 891, 1962) referred to in the instant Petition, page 3, specifically presented the question* of claim in-

* The Question Presented was the following:

"Does a patent claim covering a combination of chemical ingredients satisfy legal standards of definiteness when, at the exact point where novelty is claimed over the prior art, the claim refers only in conveniently functional language to the presence of a critical ingredient in an amount 'sufficient' to produce one result and 'insufficient' to produce another and where testing is required to determine such amount and the actual scope of the patent monopoly?"

definiteness under Section 112, and asked this Court to resolve whether said section liberalizes or renders obsolete the rule in the *G. E. Case* (304 U. S. 364) and the *Halliburton Case* (329 U. S. 1).

The instant Petition raises the identical question of claim indefiniteness. "The first decision has become the settled law of the case" and bars reexamination of questions decided on an earlier appeal. *Thompson* v. *Maxwell Land Grant and Railway Company* (1897), 168 U. S. 451, 456; *Roberts* v. *Cooper* (1857), 20 Howard 467, 481.

"The jurisdiction [to bring up cases by certiorari from the Circuit Courts of Appeal] was not conferred on this Court merely to give the defeated party in the Circuit Court of Appeals another hearing. *Magnum* v. *Coty*, 262 U. S. 159, 163, 43 S. Ct. 531, 67 L. Ed. 922.

Here, the concurrent findings of the District Court and of the Court of Appeals were that petitioners were in contempt because of petitioners' infringement of claims already held valid by the Court of Appeals.

As this Court held in *Goodyear Tire & Rubber Co. et al* v. *Ray-O-Vac Company*, 321 U. S. 275, 278:

> "The Circuit Court of Appeals reexamined the findings in the light of the evidence and accepted them. It must be a strong case in which this court will set aside these concurrent findings of two courts. We think this is not such a case."

Petitioners contend (page 10) that "There is a pressing need for this Court to breathe life into U. S. Code, Title 35, Section 112". But the Ninth Circuit Court of Appeals considered this Court's rulings in the very same cases decided by this Court that petitioners now allege have been "diluted" by subsequent lower court decisions involving Section 112. Here, the courts below strictly construed Section 112 and found the claims in suit to comply

therewith and also to comply with or distinguish from this Court's decisions in the cases to which petitioners now call attention.

Petitioners (pages 11 to 17) seek on the basis of statistics to show that other courts have followed the reasoning of the Ninth Circuit Court of Appeals in this case and that, because of this case, such courts are "not applying the statutory standard" (page 12). Could it be that the Ninth Circuit Court of Appeals did apply the statutory standard correctly, and that the following of its reasoning by other courts serves only to confirm that fact? Petitioners would have more justification for their contention that the Ninth Circuit decisions in this case were in error had other courts refused to follow those decisions in their construction of Section 112.

The Ninth Circuit Court of Appeals did not question "the vitality of the statutory standard set forth in U. S. Code, Title 35, Section 112" (page 13); it gave most serious consideration to the provisions of that section, not once but several times, to wit in its decisions of November 16, 1961, 299 F. 2d 160, and of October 24, 1966, 368 F. 2d 553, and in its denial of petitioners' Second Petition for Rehearing, filed March 11, 1966. (Respondent's Appendix, pages 10 to 20).

As to petitioners' contention (page 7) "that the public cannot even locate the metes and bounds . . ." of the patent monopoly except "by experimental testing", such contention is refuted by petitioners' (Radiant's*) own admission (OR** 525), which employs the same claim phraseology that petitioners now complain of:

"With respect to the resins which Radiant Color

* Radiant is the name by which petitioners were referred to below.

** OR is the abbreviation for the original record sent up in No. 803 and put of record in the present petition No. 1007.

> Company uses in its pigments, we will admit on the record that the resin is thermoplastic and that it is a co-condensation product having formaldehyde, toluene sulfonamide and melamine components.
>
> "In addition, we will admit that the amount of melamine component exceeds 25% but does not exceed 50% by weight of the sulfonamide component, and that the *amount of melamine component is sufficient to render the condensation product substantially insoluble in aromatic hydrocarbon solvents, but that it is insufficient to render it thermosetting.*" (Emphasis supplied.)

Obviously, prior to making the foregoing admission, petitioners must have established by tests of their own (accused) resins that such resins responded to the claim language of which petitioners now say "the public cannot even locate the metes and bounds". Tests actually used and routinely made by Radiant months before trial (DX. A; OR. 335, 872; and DX B; OR. 338, 874) show that petitioners were familiar with "a simple, clear test for any ordinary chemist to perform in order that the precise critical limits be ascertained in a particular case" (Appendix 32a).

As the Appellate Court went on to say (*ibid.*):

> "Under such circumstances, the fact that some preliminary testing is required does not render the claim invalid for vagueness. *Mineral Separation, Limited* v. *Hyde*, 1916, 242 U. S. 261."

Petitioners are not correct (page 17) in urging that the decisions below excuse compliance with 35 U. S. C. Section 112. The alleged "emerging effectiveness of *Locklin* as continuing precedent" is a recognition by other courts of the correctness of such decisions as to what is required in order to comply with Section 112.

We have here no conflict of decisions in different Circuits to justify a review by this Court.

Petitioners pretend that they are championing the rights of the public (pages 17 and 18). This pretense is too transparent to require comment.

There is no substance to petitioners' arguments. Their petition for the writ of certiorari should be denied.

Respectfully submitted,

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(Respondent's Appendix follows)

APPENDIX.

LOCKLIN ET AL v. SWITZER BROS., INC.

C. A. 36,995.

Chronology of Decisions by or arising out of the Ninth Circuit Court of Appeals prior to Petition for Writ of Certiorari No. 1007 from Appeal 20,944.

(1) November 16, 1961: Original opinion of Court of Appeals, Appeal No. 16,780, holding patent valid and infringed. Reported at 299 F. 2d 160.
December 26, 1961: Decision of Court of Appeals, Appeal No. 16,780, denying petition for rehearing filed December 16, 1961, also reported at 299 F. 2d 160.

(2) April 23, 1962: Petition for Writ of Certiorari No. 803 Denied. 369 U. S. 861.
May 21, 1962: Petition for rehearing denied in No. 803. 369 U. S. 891.

(3) June 30, 1965: Decision of Court of Appeals, in civil contempt case affirming in part and remanding with instructions, Appeal No. 19,467, reported at 348 F. 2d 244.

(4) April 20, 1966: (Not reported) decision of Court of Appeals, Appeal No. 16,780, denying Second Petition for Rehearing filed March 11, 1966.

(5) October 24, 1966: Decision of Court of Appeals in civil contempt case, Appeal No. 20,944 reported at 368 F. 2d 553.
November 30, 1966: Decision of Court of Appeals denying Petition for Rehearing in Appeal No. 20,944, also reported at 368 F. 2d 553.

No. 16,780.

UNITED STATES COURT OF APPEALS
For the Ninth Circuit.

HARRY P. LOCKLIN and ELMER J. BRANT, general partners doing business under the firm name of RADIANT COLOR COMPANY,

Appellants,

vs.

SWITZER BROTHERS, INC., a corporation,

Appellee.

SECOND PETITION FOR REHEARING.

To the Honorable Judges of the United States Court of Appeals for the Ninth Circuit:

Most respectfully, Harry P. Locklin and Elmer J. Brant, general partners doing business under the firm name of Radiant Color Company, appellants above-named, petition this Court to grant a rehearing of the above-entitled cause with respect to its opinion handed down November 16, 1961, and reported at 299 F. 2d 160 on the grounds set forth in this Petition.

1. One of the important issues which appellants raised on the original appeal was that Switzer's Kazenas Patent No. 2,809,954 did not comply with that provision of U. S. Code, Title 35, Section 112 which provides:

> "The specification shall conclude with one or more claims *particularly* pointing out and *distinctly* claiming the subject matter which the applicant regards as his invention." (Emphasis added.)

2. Appellants based their contention upon the premise that the language of the Kazenas claims that the amount of melamine is an amount "sufficient to render said condensation product substantially insoluble in aromatic hydrocarbon solvents" did not fulfill the mandate of the statute.

3. In overruling appellants' contention on that statutory defense, the District Court made the determinations set forth in its opinion of September 4, 1959, a copy of which is attached to this petition as Appendix A. On this specific defense, the District Court said among other things:

> ". . . The expression of the maximum and minimum melamine content in functional terms limits the claims to the exact scope of the invention. Indeed, the functional expressions define the limits of the invention more precisely than would have been practically possible by wholly mathematical expressions."

4. In overruling appellants' contention on that statutory defense, this Court, in its opinion of November 16, 1961, made the determinations set forth in its opinion, a copy of which is attached to this petition as Appendix B. With specific reference to the functional limitation as defining invention over the prior art Japanese patent, this Court particularly noted that the District Court "carefully considered the Japanese patent and, apparently relying on the testimony of Dr. Hatcher with respect to his experiments on this patent", concluded that the Japanese resin differed from the Kazenas resin "in at least one vital respect in that it is soluble in aromatic hydrocarbons, while the Kazenas resin is substantially insoluble."

In overruling the statutory defense, this Court recognized that "the novelty for which Switzer contends is that this resin is both thermoplastic and insoluble . . .", and relieved Switzer from the alternative "to state the critical lower limits precisely" because:

". . . The critical point remains the same for each melamine compound used. It simply is not specified. But whether specified or unspecified the scope of the claim is precisely that of the invention."

• • • • •

". . . There is testimony to the effect that 'sufficient melamine to render the resin substantially insoluble' is a simple, clear test for an ordinary chemist to perform and one which does not require extensive experimentation in order that the precise critical limits be ascertained in a particular case. . . ."

5. The testimony of Dr. Hatcher with respect to his experiments upon the Japanese patent and the Kazenas resin, as well as all portions of his testimony having any bearing upon the contested statutory issue, are abstracted from the original record on appeal and are reproduced as Appendix C attached to this petition. In summary, the testimony of Dr. Hatcher shows that:

A. His experiments for determining whether the resin was substantially insoluble in aromatic hydrocarbon solvents consisted solely of a single series of tests in which he ground the prior art resin and the Kazenas Example 5 resin and placed them in pure toluene in August 1958, and demonstrated the agglomeration of the prior art resin and the free flowing characteristics of the Kazenas Example 5 resin to the District Court in January 1959, an elapsed time of about four and one-half months.

B. The only language in the patent specification which even suggests that the Kazenas resin contained sufficient melamine to render the resin substantially insoluble in aromatic hydrocarbons is:

". . . The new resin is insoluble in many common vehicles and can therefore be suspended in such vehicles without coalescence or agglomeration."

• • • • •

"The pigments prepared in the manner described in the foregoing examples are insoluble in water and aliphatic hydrocarbon solvents, are practically insoluble in aromatic hydrocarbon solvents, and are soluble in ketones and solvent esters. . . ."

* * * * *

"Based on these physical characteristics, the pigments may be used in vehicles which are non-solvents for the pigments to form various types of inks and the like. . . ."

6. After this Court denied the earlier Petition for Rehearing, and after the Supreme Court denied a petition for the writ of certiorari and denied rehearing, appellants adopted one form of substitute resin for the adjudicated resin. While the accounting proceedings were still pending, Switzer brought proceedings to have appellants declared in contempt of court because of their manufacture and sale of that substitute resin. Such proceedings resulted in a contempt judgment which this Court set aside in *Locklin* v. *Switzer Brothers, Inc.* (9 Cir. 1965), 348 F. 2d 244. The opinion of the Court is attached to this petition as Appendix D. In its opinion, this Court remanded the matter

". . . with instructions that the order of the District Court be set aside and that trial be had upon the sole question whether, in the 4-C resin, the amount of melamine utilized is such as to bring the resin within the limits of the claims of the Kazenas patent as those claims are delineated in our former opinion."

7. After this Court handed down its mandate on said last appeal, and after trial on the merits, the District Court entered findings of fact and conclusions of law incorporated in a written memorandum decision filed February 17, 1966 and reproduced as Appendix E attached to this Petition.

8. On its face, the facts found by the District Court

on February 17, 1966, demonstrate that the premises upon which the District Court based its decision of September 4, 1959 and upon which this Court based its opinion of November 17, 1961, were contrary to fact in some respects and latently indefinite in other respects, all as are set forth below:

A. This Court in its opinion relied upon the premise that once the resin is finely ground, it must remain insoluble in aromatic hydrocarbon solvents and in a state of free flowing suspension. This premise underlies the following determination of this Court:

> ". . . The resin must be capable of being finely ground. Once ground, it must remain insoluble in common paint vehicles or solvents and in a state of free flowing suspension."
>
> * * * * *
>
> "The Kazenas patent is for a resin which is a co-condensation of all three of these chemical compoments and which is thermoplastic but still is capable of being finely ground and which remains insoluble without agglomeration in aromatic hydrocarbon solvents."
>
> * * * * *
>
> ". . . If the fact was that the resin would agglomerate and would not remain free flowing, Radiant could have established this by its own pre-trial experiments and have introduced evidence with respect to those experiments at the proper time. . . ."

Now in order to construe the claims on the contempt matter, the District Court found the following fact:

> ". . . all resins of this type will eventually agglomerate in any pure aromatic hydrocarbon solvent. The stronger the solvent the less time it will take to agglomerate. . . ."

B. This Court in its earlier opinion relied upon testimony "to the effect that 'sufficient melamine to render the

resin substantially insoluble' is a simple, clear test for an ordinary chemist to perform and one which does not require extensive experimentation in order that the precise critical limits be ascertained in a particular case."

The only testimony as to experiments of Dr. Hatcher which he used to demonstrate the difference between the Japanese resin and the Kazenas resin consisted of placing the powdered resins in pure toluene and demonstrating their condition to the District Court four and a half months after they had been deposited.

The District Court, in deciding the contempt matter, was unable to apply simple tests of the type conducted by Dr. Hatcher. The District Court instead applied certain 24-hour and 17-day qualitative tests as well as a 24-hour quantitative test, none of which conformed to any experiment conducted by Dr. Hatcher. To illustrate the vagueness of the standards needed to construe the claims, the Court necessarily found:

> "The Court, however, in no wise suggests that the above tests represent the minimum standard for determining the question presented or that the 24 hour qualitative test, alone, would not suffice for determining the question here. The Court merely holds that the above tests when considered together do in fact show beyond any doubt that the accused 4-C resin contains sufficient melamine to render it substantially insoluble in aromatic hydrocarbon solvents."

Thus, after eight years of litigation and testing there is not yet discernible any minimum standard which is determinative of whether the amount of melamine is sufficient to render the resin substantially insoluble in aromatic hydrocarbon solvents.

C. This Court in its opinion treated aromatic hydrocarbon solvents generically and made no distinction as between different kinds of aromatic hydrocarbon solvents

in sustaining the validity of the Kazenas patent. The District Court in its initial opinion sustaining validity referred to aromatic hydrocarbons, aromatic hydrocarbon solvents, aromatic hydrocarbon insolubility, benzene, toluene and xylene, without discrimination.

The District Court, on the other hand, is now unable to construe and apply the claims as written. It excludes a seven weeks test in benzene because:

> ". . . . According to the testimony of Dr. Von Fischer, and certain publications introduced at trial (RT 220-225), benzene has a very high solvent power, is the most volatile of the aromatic hydrocarbon solvents, is quite toxic and is not generally employed as a solvent in paint vehicles of the type herein used. Since benzene is the strongest of the three aromatic hydrocarbon solvents, a resin should agglomerate in it first."

D. This Court in its opinion treated aromatic hydrocarbon solvents as if solubility in such "solvents" was a factor to be considered. Indeed this would be expected —for the claims specifically recite "aromatic hydrocarbon solvents."

On the contempt hearing, however, the District Court found it necessary in construing the claims to look beyond "solvents" to paint vehicles which merely include an aromatic hydrocarbon solvent as a constituent. With respect to this, the District Court now finds:

> "Further, the testing of a resin in any pure aromatic hydrocarbon solvent is merely an indication of the substantial insolubility of the resin in a paint vehicle.
>
> "The mere fact that resin agglomerates within four or more weeks in a pure hydrocarbon solvent, such as benzene, does not necessarily indicate that the resin will agglomerate in a paint vehicle in the same period of time. Pure hydrocarbon solvents are never used alone with resin in a paint vehicle, but only in con-

junction with other liquids and substances which in effect reduce the strength of the pure solvent.

"Thus, in a paint vehicle the resin will actually remain insoluble for a considerably longer period of time than in a pure solvent.

"As demonstrated at trial by Switzer, resins made up in accordance with the examples in the Kazenas patent have remained free-flowing and dispersable in the paint vehicles for longer than five years (RT 109-113)."

9. These facts clearly demonstrate that the claims of the patent fail to particularly point out and distinctly claim the invention in the following respects:

(a) The claims do not state whether the test for "substantially insoluble" should be qualitative or quantitative and the District Court after a full hearing was unable to make a definitive determination as to "the minimum standard for determining the question presented."

(b) With respect to a qualitative definition, the claims do not state how long the resin must remain "substantially insoluble." The District Court felt compelled to accept a lapse of time between the date when the powdered resin was placed in toluene and the date when the observations of the condition of the resin in the toluene were made of less than one week, whereas for purposes of validity, the District Court in the first instance relied upon a period of several months.

(c) With respect to qualitative tests, the claims do not state whether "substantially insoluble" is a matter of substance or a matter of mere form. The District Court in the last instance found that all resins of this type will eventually agglomerate in any pure aromatic hydrocarbon solvent, whereas this Court in its original

opinion found that the resins had to remain free flowing in aromatic hydrocarbon solvents.

(d) With regard to quantitative tests, the claims do not state any definite quantity of solubility which would be "substantially insoluble." The District Court did not adopt any definite or distinct quantity as defining the difference between the prior art Japanese resin and the patented resins with respect to substantial insolubility and Dr. Hatcher did not testify in this area at all on the original trial.

(e) It now appears that the words "aromatic hydrocarbon" are not definite. The District Court found it necessary on the contempt proceedings to vary the ordinary meaning of the words "aromatic hydrocarbon solvents" by giving benzene different treatment than other aromatic hydrocarbon solvents—although benzene has been recognized as being the parent of all aromatic hydrocarbon solvents.

(f) It now appears that the word "solvents" is indefinite. In construing the term "aromatic hydrocarbon solvents" in the claims, the District Court found it necessary to distinguish solvents from common paint vehicles.

10. The facts thus newly found and the deviations from the original opinions now found essential to construe the claims establish, appellants submit, that the claims do not particularly and distinctly claim the invention and warrant a reversal of the original findings and determinations that such claims do comply with the statute. This conclusion is supported by the following cases:

United Carbon v. *Binney Co.* (1942), 317 U. S. 228;

Standard Brands v. *Yeast Corp.* (1939), 308 U. S. 34, at page 38;

Barkeij v. *Lockheed Aircraft Corp.* (9 Cir. 1954), 210 F. 2d 1, cert. den. (1954), 348 U. S. 847, reh. den. (1954), 348 U. S. 884;

Vitamin Technologists v. *Wisconsin Alumni Research F.* (9 Cir. 1944, as amended 1945), 146 F. 2d 941, cert. den. (1945), 325 U. S. 876, reh. den. (1945), 326 U. S. 804;

Jones Knitting Corp. v. *Morgan* (E. D. Pa. 1964), 244 F. Supp. 219, at pages 222-224;

McCulloch Motors Corporation v. *Ogden Saw Chain Corp.* (S. D. Cal. C. D. 1964), 234 F. Supp. 256, at pages 258-259;

Marshall v. *Procter & Gamble Manufacturing Company* (D. Md. 1962), 210 F. Supp. 619, at pages 630-631; and

Armco Steel Corp. v. *United States Steel Corp.* (W. D. Pa. 1962), 203 F. Supp. 654, at pages 656-657.

Although the *United Carbon, Barkeij* and *Vitamin Technologists* cases were cited in Appellants' Opening Brief, in No. 16,780, pages 90-95, Switzer made no effort to distinguish any of them in its Brief for Defendant-Appellee and this Court, quite understandably, in view of Switzer's contentions then made, did not in its opinion foresee the latent ambiguities inherent in the Kazenas claims making such cases applicable. *Standard Brands* is newly cited authority urged as being pertinent to indefiniteness now exposed by the experimentation which is necessary to define the invention as now presented by Switzer. The remaining cases all came down after this Court's decision of November 16, 1961.

The facts now found on the contempt matter and made in the light of Switzer's present contentions, certify that the latent ambiguities create a real uncertainty of claim language in violation of the statute. The mere fact that

the claim language is susceptible of the shifting and variable interpretations now manifest in the several opinions proves that the claims are not definite.

11. This petition for rehearing is based solely upon the face of the opinion below and does not attack the opinion on the merits. On the merits, the decision below will be made the subject matter of an independent appeal.

For the foregoing reasons, petitioners respectfully pray that this, their second petition for rehearing, be granted and that this Court grant reargument on the question of whether the claims conform with 35 U. S. C. 112 in the light of the findings which the District Court has just made. In the alternative and if this second petition for rehearing be denied, petitioners pray that the denial grant them the privilege to file a motion for reconsideration of this issue in the District Court so that the matter of statutory compliance may there be redetermined in the light of the facts brought out in the most recent opinion of the District Court.

Respectfully submitted,

CARL HOPPE,
Attorney for Appellants and Petitioners.

CERTIFICATE OF COUNSEL.

I, Carl Hoppe, attorney for Appellants, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for purpose of delay.

CARL HOPPE.